

### **REMARKS**

New claim 41 supported by the limitation now canceled from claim 1.

#### **Claim Rejections - 35 USC § 112**

Claims 1-3, 5, 7, and 9-14 were rejected under 35 U.S.C. 112, second paragraph. This rejection is respectfully traversed and should be withdrawn in light of the Amendment filed March 10, 2009.

#### **Claim Rejections - 35 USC § 103**

Claims 1-3, 5, 7, and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cleve et al. (Mol. Cell. Probes (1998) 12:243-147) in view of Dimitrov et al (U.S. 2003/0013091), and further in view of Hildebrandt et al., "Surface-Enhanced Resonance Raman Spectroscopy of Rhodamine 6G Absorbed on Colloidal Silver," J. Phys. Chem., 1984, Vo1.88, pp.5935-5944, OR Kudelski et al., "Characterization of the copper surface optimized for use as a substrate for surface-enhanced Raman scattering," Vibrational Spectroscopy, 1998, Vo1.16, pp.21-29. This rejection is respectfully traversed and should be withdrawn in light of the arguments in the Amendment filed March 10, 2009.

Claims 1-3, 5, 7, 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singer et al (U.S. Patent 6,534,266) in view of Urdea et al (U.S. Patent 5,635,352), in view of Horn et al (U.S. 2001/0009760), and further in view of Hildebrandt et al., "Surface-Enhanced Resonance Raman Spectroscopy of Rhodamine 6G Absorbed on Colloidal Silver," J. Phys. Chem., 1984, Vo1.88, pp.5935-5944, OR Kudelski et al., "Characterization of the copper surface optimized for use as a substrate for surface-enhanced Raman scattering," Vibrational Spectroscopy, 1998, Vo1.16, pp.21-29. This rejection is respectfully traversed and should be withdrawn in light of the arguments in the Amendment filed March 10, 2009.

Claims 1-3, 5, 7, and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woudenberg (US 7,198,900, filed 8/29/03), in view of Hildebrandt et al., "Surface-Enhanced Resonance Raman Spectroscopy of Rhodamine 6G Absorbed on Colloidal Silver," J. Phys. Chem., 1984, Vol. 88, pp. 5935-5944, OR Kudelski et al., "Characterization of the copper surface optimized for use as a substrate for surface-enhanced Raman scattering," Vibrational Spectroscopy, 1998, Vol. 16, pp. 21-29. This rejection is respectfully traversed.

The present application was filed on September 24, 2003, while the effective filing date of Woudenberg is August 29, 2003. Applicants antedate Woudenberg by filing a declaration under 37 CFR 1.131, attached herewith.<sup>1</sup> Thus, the rejection over Woudenberg in view of Hildebrandt or Kudelski should be held in abeyance.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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By: /Raj S. Dave/

Raj S. Davé  
Registration No.: 42,465  
Attorney for Applicant(s)

Customer No. 00909  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
P.O. Box 10500  
McLean, VA 22102  
Telephone: 703-770-7900  
Facsimile: 703-770-7901

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<sup>1</sup> In the Amendment of March 10, 2009, Applicants inadvertently referred to the Rule 131 Declaration as "Rule 132 Declaration."

Application No. 10/670,701  
Supplemental Amendment dated March 20, 2009  
Reply to Non-Final Rejection dated October 10, 2009

Docket No.: 043395-0377977

**ATTACHMENT: RULE 131 DECLARATION**